

2612.

APPROVAL, BONDS OF BOWLING GREEN CITY SCHOOL DISTRICT,  
WOOD COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, December 1, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2613.

APPROVAL, BONDS OF ELLSWORTH RURAL SCHOOL DISTRICT, MA-  
HONING COUNTY, OHIO—\$7,000.00.

COLUMBUS, OHIO, December 1, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2614.

APPROVAL, BONDS OF CANAAN TOWNSHIP RURAL SCHOOL DIS-  
TRICT, WAYNE COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, December 1, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2615.

ROADS—COUNTY COMMISSIONERS' JURISDICTION—NO LIMITATION  
OF AUTHORITY ON COUNTY ROADS OUTSIDE A MUNICIPALITY—  
SUCH JURISDICTION NOT IN CONFLICT WITH CITY PLANNING  
COMMISSION.

**SYLLABUS:**

*The board of county commissioners, in the exercise of its power under the provisions of Section 6860 of the General Code, is in nowise limited by the provisions of Section 3586-1, General Code, in the construction of roads in territory outside of the municipality.*

COLUMBUS, OHIO, December 2, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your communication which reads as follows:

"A question has arisen which involves the jurisdiction and relationship of the county commissioners of Stark County and the City Planning Commission. It is a question of coordinating the powers granted the Planning Commission under Section 3586-1 of the General Code and the powers granted the county commissioners under Section 6860, et seq.

When the establishment of a new road, under Section 6860, et seq., is before the county commissioners and said road lies within three miles of the city limits and therefore within the territory generally under the jurisdiction of the City Planning Commission and a plan for the major streets and thoroughfares, future extensions, etc., which plan is sufficient in detail to show the general outline and character recommended for subsequent development of the territory, then and under these conditions, which board has the final decision as to the location, width, etc., of the proposed new road?

If the final power is vested in the county commissioners of Stark County, is it mandatory that the case be referred to the Planning Commission for approval, disapproval or recommendation, before the county commissioners can take final action, in the same manner as provided for in connection with the procedure for vacation of streets within the city and before the city council?

Does the opening and establishing of a new road under the conditions set out above, and where said road either passes through the interior of a tract of land, or where a portion of the width is from one tract and the remainder of the width from an adjoining tract, constitute a 'subdivision' of said tracts within the meaning of said word 'subdivision' as used in the various statutes referring to Planning Commission, Plats, Platting, Recording, etc?"

Section 6860 of the General Code, as last amended, reads :

"The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the Director of Highways shall be had."

It will be observed that Section 6860 expressly authorizes the commissioners to locate, establish, alter, widen, straighten, vacate or change the direction of roads. The following sections provide the manner in which the commissioners shall proceed, and nowhere in said section is there to be found any limitation with reference to the Planning Commission's approval in connection with the exercise of such power.

In an opinion of my predecessor found in Opinions of the Attorney General for 1928, at page 198, it was held :

"Under Section 6860 of the General Code, county commissioners have authority to vacate a street on a dedicated plat lying without the corporate limits of a municipal corporation."

Section 3586-1 of the General Code, to which you refer, and which is a part of Chapter 4 relating to plats, reads in part :

"Whenever a city planning commission of any city shall have adopted a plan for the major streets or thoroughfares and for the parks and other open public grounds of said city or any part thereof or for the territory within three miles of the corporate limits thereof or any part thereof except a part lying within a village, then no plat of a subdivision of land within said city

or part thereof or said territory or part thereof shall be recorded until it has been approved by such city planning commission and such approval be endorsed in writing on the plat. If such land lie within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land. When a village planning commission shall have adopted a plan for the major streets and thoroughfares and parks and other public grounds of such village or any part thereof, then no plat of a subdivision of land within said village or part thereof shall be recorded until it has been approved by such village commission and such approval endorsed in writing in the plat."

In analyzing the section above quoted, it will be observed that the inhibition provided for in said section is against the filing of a plat of a subdivision for record until it is approved by such village commission. While apparently in view of said section it will be necessary to have such a plat approved by the planning commission for territory within three miles of the municipality before the same could be properly recorded, the approval and recording of such a plat would in nowise limit the jurisdiction of the county commissioners in the exercise of their powers under Section 6860 of the General Code. There appears to be no conflict in the two provisions of the statute.

The conclusions which I have heretofore reached seem to be in accord with Sections 4366-1 et seq., which relate to city planning commissioners. Section 4366-2, which relates to the powers and duties of the commission to make plans and maps of the whole or any portion of the municipality and of any land outside of the municipality, provides, among other things, that such maps or plans shall show the commission's recommendation for new streets, alleys, ways, etc. The section further provides that when the commission shall have made a plan of the municipality, no public building, etc., or part thereof, shall be constructed or authorized to be constructed "in the municipality of said planned portion of the municipality until and unless the location thereof shall be approved by the commission." However, provision is made for the council to overrule the decision of the commission by taking the proper steps provided for in said section. The section then further provides:

"The commission may make recommendations to any public authorities or to any corporations or individuals in such municipality or the territory contiguous thereto, concerning the location of any buildings, structures or works to be erected or constructed by them."

It would, therefore, appear that in so far as the planning commission is concerned with reference to territory outside of the municipality, it only acts in an advisory capacity and makes recommendations. Of course, as hereinbefore indicated, a plat of a subdivision could not properly be filed without the approval of the planning commission. In this connection it will be observed that Sections 4366-13 et seq., of the General Code, provide for a regional planning commission to be established by the city and county, which may establish a region including territory both within and without the city. When such a commission has adopted plans, then by the terms of Section 4366-17, General Code, the county commissioners may not depart from said plans in connection with the construction of a public improvement *except* by unanimous vote. The express limitation of the county commissioners in the manner above mentioned is indicative of the fact that when the Legislature intended that the power of the commissioners should be restricted by a planning commission, it so stated.

Based upon the foregoing, it is my opinion that the board of county commissioners, in the exercise of its power under the provisions of Section 6860 of the General Code,

is in nowise limited by the provisions of Section 3586-1, General Code, in the construction of roads in territory outside of the municipality. It follows, therefore, that in the case you mention the county commissioners are not limited in the exercise of their powers by reason of the recommendations of the planning commission. It is believed that a more specific answer to your inquiry is unnecessary.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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2616.

APPROVAL, BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY,  
OHIO—\$30,000.00.

COLUMBUS, OHIO, December 2, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

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2617.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
HAMILTON AND MADISON COUNTIES.

COLUMBUS, OHIO, December 3, 1930.

HON. ROBERT N. WAID, *Director, Department of Highways, Columbus, Ohio.*

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2618.

APPROVAL, BONDS OF CUYAHOGA FALLS CITY SCHOOL DISTRICT,  
SUMMIT COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, December 3, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*